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The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Re: Review of LAX Project by Airport Land Use Commission

Dear Supervisors:

In light of the upcoming hearing by the Los Angeles County Airport Land Use Commission ("ALUC" or "County ALUC") regarding the Los Angeles International Airport ("LAX") Master Plan Project ("LAX Project"), this is to provide your Board a report describing the ALUC's review process over the LAX Project.

The report provides background on the LAX Project, an overview of state law governing ALUCs, and the specific role the County ALUC will serve in reviewing the LAX Project.

The report also addresses the procedures and voting requirements that the City of Los Angeles ("City" or "City Council") must satisfy to overrule decisions by the ALUC regarding the LAX Project.

BRIEF SUMMARY

Consistency Determination

The ALUC is a statutorily created commission that is required to review the LAX Project to determine whether it is consistent with the Los Angeles County Airport Land Use Plan. If the ALUC determines that the LAX Project is inconsistent with the plan, the City can overrule the ALUC's decision by a two-thirds vote of the City Council.

For a vote to overrule, the applicable statute requires "a two-thirds vote of [the] governing body." The City's governing body has 15 members. Thus, a two-thirds vote of the full City Council is ten votes. We note, as discussed in Section III(A) below, that the California Attorney General has concluded in a 1992 opinion that, if all members are not present, the two-thirds vote requirement must be applied to the number of members present (assuming that a quorum requirement is met).

Appeals

The ALUC also has authority to hear appeals filed by a local agency affected by the LAX Project regarding impasses with the City over any planning aspect of the LAX Project. An appeal can be filed by any potentially affected local agency, including the cities of El Segundo, Inglewood, Hawthorne, and Culver City, and the County. The time to file such an appeal in connection with the LAX Project would be after the City takes a final action to approve the LAX Project following an ALUC consistency determination, or after the City makes a final decision to overrule an ALUC inconsistency determination.

The ALUC would consider an appeal in light of the broad statutory purpose of the ALUC law and would not conduct a strict consistency review. If the ALUC rules adversely to the City on the appeal, the LAX Project cannot proceed unless the City overrules the decision by a four-fifths vote of the City Council.

A four-fifths vote of the full City Council is 12 votes. However, under the reasoning in the Attorney General's opinion, the overrule vote would be based on a quorum of the City Council members rather than the City Council's full membership. This issue is discussed further in Section III(B) below.

DISCUSSION

I. Background of the LAX Project

LAX is owned by the City and operated by the governing board of Los Angeles World Airports ("LAWA"), a branch of the City. The airport is situated within the territorial limits of the City. Neighboring jurisdictions include the cities of El Segundo, Inglewood, Hawthorne, and Culver City, and the unincorporated County communities of Lennox, Del Aire, Marina Del Rey, and West Athens-Westmont.

The LAX Project is a long-range development plan that contains a number of proposed changes to LAX. These changes include expanding the airport

boundaries, relocating and widening certain runways, reconfiguring certain terminals, and building a new terminal. The plan also proposes establishing a new ground transportation center in the Manchester Square area which would become the primary location for passenger pick-up and drop-off.

The LAX Project consists of a proposed airport master plan ("Master Plan") and a related implementation program ("Implementation Program"). The Implementation Program involves adoption of an airport general and specific plan, proposed amendments to the citywide general plan, and zoning code that are necessary to implement the LAX Project.

On June 14, 2004, the City's planning commission and the governing board of LAWA approved the LAX Project. Shortly thereafter, the City submitted its application for the LAX Project to the ALUC for review. On July 8, 2004, after receiving supplemental materials from the City, the ALUC deemed the City's application to be complete.

By statute, the ALUC has 60 days from the date of the application's "referral" to make a consistency determination. California Public Utilities Code ("PUC") section 21676(d). The statute provides no definition for this term and we believe that the 60-day period begins on the date the application is deemed complete. This means that the ALUC has until September 6, 2004, to render a decision. The City has been advised in writing of this date and has raised no objection.

Based on this time frame, the ALUC has scheduled the matter for a public hearing on August 16, 2004, and has reserved August 25, 2004, as a potential date to continue the public hearing if necessary.

II. Overview of State Law Governing ALUCs

A. Generally

ALUCs are statutorily created in each county for the purpose of ensuring the orderly expansion of public use airports and adopting land use measures to minimize the public's exposure to excessive noise and safety hazards within the airports' surrounding areas. PUC sections 21670, et seq. In most counties, ALUCs consist of seven members - two members representing the cities in the county, two members representing the county, two members with aviation expertise, and one member representing the general public. PUC section 21670(b).

This make-up for the ALUC does not apply to the County ALUC. As discussed in subsection B below, the County's Regional Planning Commission serves as the County ALUC. However, all of the ALUC functions described in this subsection A are applicable statewide to all ALUCs, including the County ALUC.

ALUCs assist local agencies in land use compatibility planning near airports. PUC section 21674(a). They also coordinate planning at the state, regional, and local levels to provide for the orderly development of air transportation, while at the same time protecting the public health, safety, and welfare. PUC section 21674(b).

Among their duties, ALUCs are required to prepare and adopt an airport land use compatibility plan ("Compatibility Plan") for each public use airport in their jurisdiction. PUC section 21674(c). The Compatibility Plan must provide for the orderly growth of each airport and surrounding area. PUC section 21675(a).

After adoption of a Compatibility Plan, ALUCs are required to review plans, regulations and other actions of local agencies, and make recommendations concerning these proposals within the boundaries of the Compatibility Plan. PUC section 21674(d).

For example, ALUCs are required to review proposals for the construction or expansion of new or existing airports to determine consistency with the Compatibility Plan. PUC sections 21661.5, 21664.5(a) and (b). Proposed changes to an airport master plan must also be reviewed by the local ALUC for consistency with the Compatibility Plan. PUC section 21676(c). Moreover, before a local agency can adopt or amend a general plan, specific plan, zoning ordinance, or building regulation that affects land covered by the Compatibility Plan, the proposal must be submitted to the ALUC for a determination of whether the proposed action is consistent with the Compatibility Plan. PUC section 21676(b).

If the ALUC determines that the proposal is consistent with the Compatibility Plan, the proposal can go forward. If the ALUC determines that the proposal is inconsistent with the Compatibility Plan, the local agency may overrule the ALUC decision with a super-majority vote, discussed below. PUC section 21676(b) and (c).

To overrule an ALUC inconsistency decision, the local agency must first conduct a public hearing to reconsider the proposal. After the hearing, the local agency may propose to overrule the ALUC decision by a two-thirds vote of its

governing body. To do so, it must make specific findings that the proposal is consistent with the purposes of the ALUC law. Id. Then, at least 45 days before making a final decision, the local agency must give its proposed decision and findings to the ALUC, which is permitted to provide comments to the local agency. Id.

The final vote required by the local agency to overrule an ALUC Compatibility Plan inconsistency decision is the same as the proposed decision, i.e., two-thirds of the governing body. Id.

The consequence for failing to overrule the ALUC decision differs depending on the scope of the proposal under consideration. If the proposal is an airport master plan, the statute provides no guidance. However, based on the statutory purpose of ALUCs, our review of their legislative history, and the state's handbook on airport planning, we believe that the master plan would be disallowed and any projects contemplated by the master plan could not proceed. See Cal. Trans. Airport Land Use Planning Handbook, 2002 at Figure 4A.

If the proposal is a general or specific plan amendment, the local agency has the option to revise its general or specific plan to be consistent with the Compatibility Plan. PUC section 21676.5(b). Otherwise, the ALUC can require all of the local agency's subsequent proposed actions, regulations, and permits to be submitted to the ALUC for review. PUC section 21676.5(a). If this occurs, the ALUC's review of these subsequent proposals would be the same as its review of the original proposed project, i.e., to determine consistency with the Compatibility Plan. Furthermore, the overrule provisions described above would apply to the ALUC's consistency determination regarding these subsequent submittals.

B. The ALUC in Los Angeles County

In Los Angeles County, a special statute governs the ALUC. PUC section 21670.2. This statute exempts the County from the general provisions regarding ALUC's composition and provides as follows:

"In [Los Angeles] county, the county regional planning commission has the responsibility for coordinating the airport planning of public agencies within the county. In instances where impasses result relative to this planning, an appeal may be made to the county regional planning commission by any public agency involved. The action taken by the county regional planning commission on an appeal may be overruled by a four-fifths vote of the governing body of a public agency whose planning led to the appeal." PUC section 21670.2(a).

The first sentence above is unique to our County and has been interpreted to mean that the Regional Planning Commission is required to carry out the duties performed by other ALUCs in the state. Op. Leg. Counsel of Cal. (March 9, 1990). These duties include adopting a Compatibility Plan and reviewing airport master plans to determine consistency with the Compatibility Plan.

The other unique aspect of PUC section 21670.2(a) relates to the authority of the County ALUC to hear appeals, discussed at length in section III(B) below. In short, unlike other counties, competing local agencies who reach an impasse over airport planning in our County can appeal to the County ALUC. If the ALUC grants the appeal, that decision can be overturned only if the local agency against whom the ALUC ruled obtains a super-majority vote of four-fifths of its governing body.

Pursuant to its statutory authority, in 1991, the County ALUC adopted the Los Angeles County Airport Land Use Plan ("County Compatibility Plan"). This plan contains planning boundaries for each public use airport in the County and has policies and provisions for safety, noise insulation, and building height restrictions within areas adjacent to each airport. In addition, the plan promotes compatibility of land uses in and around the airports.

III. Role of the County ALUC in the LAX Project

Under the above statutes, the County ALUC has the authority to conduct two types of review in connection with the LAX Project: (1) a consistency review; and (2) a review of voluntary appeals by affected local agencies. Each is discussed below.

A. Consistency Review

The County ALUC is required to review the LAX Project to determine if it is consistent with the County Compatibility Plan. This involves evaluating whether the LAX Project furthers the Plan's policies regarding safety, noise, building height, and land use compatibility within the airport's planning boundaries.

If the LAX Project is found to be consistent, no further action would be required by the City as it relates to the County ALUC. However, for the LAX Project to proceed, the City would still need to approve the LAX Project by its applicable approval process.

If, on the other hand, the LAX Project is found to be inconsistent with the County Compatibility Plan, the City can modify the LAX Project to make it consistent, or it can attempt to overrule the County ALUC's decision. A City overrule would require a hearing, specific findings, and a two-thirds vote by the City Council.

An inconsistency determination followed by a failed City Council overrule has different consequences depending on the aspect of the LAX Project under consideration, i.e., the Master Plan or the Implementation Program (see definitions on page 2).

If the Master Plan is found inconsistent by the ALUC and not overridden by a two-thirds vote of the City Council, the entire LAX Project would fail and could not proceed under its existing terms.

However, if the Master Plan is found consistent, but the Implementation Program is found inconsistent and the City Council fails to overrule, the LAX Project could still proceed. In that case, the City could either revise the Implementation Program to be consistent with the County Compatibility Plan, or the County ALUC could require all of the City's individual regulations and permit applications within the airport planning boundary to be submitted to the County ALUC for review. If this occurs, the County ALUC would review these individual applications in the same manner as it reviewed the Master Plan and Implementation Program, i.e., for consistency with the County Compatibility Plan. Moreover, the overrule provisions described above would apply to its consistency determination.

In 1992, the California Attorney General issued an opinion analyzing the vote requirement and concluded that the two-thirds requirement applied to a quorum, or the number of members present, and not the entire membership of the governing body. See 75 Ops.Cal.Atty.Gen. 47 (1992).

We have received a copy of an opinion written by contract counsel for the City (the "City's Opinion"), citing the Attorney General's opinion, which asserts that the overrule vote is two-thirds of the City Council members constituting a quorum, rather than two-thirds of the full governing body. (We take their view to mean that an overrule vote would require a two-thirds vote of the members present.)

Ten votes constitute a quorum for purposes of transacting City Council business. See Section 244 of City's Administrative Code and Rule 25 of the City Council Rules. Accordingly, the City's Opinion would suggest that the City Council could overrule the ALUC decision with as few as seven votes (two-thirds

of ten). This would appear to be inconsistent with the City's Code and Rule just cited, which require "a majority vote of the entire membership of the Council" (eight votes) to transact business.

The Attorney General's opinion, while not binding on the courts, is viewed as persuasive and entitled to substantial weight. The courts have not addressed the overrule vote requirement in the context of the ALUC statutes, and binding resolution of the question would require litigation.

B. Review of an Appeal

PUC section 21670.2(a) authorizes the County ALUC to hear appeals filed by affected local agencies due to impasses over airport planning. There is no guidance in the statute or case law regarding the timing, scope, or standards for such appeals. However, we believe that the below-described process is supported by the clear language of the statute and its legislative history.

The Board should be aware that the City's Opinion, discussed further below, indicates that the City may disagree with our conclusion. Consequently, if the County ALUC hears an appeal regarding the LAX Project, we believe the City may contest the right of another city to appeal.

In our view, an appeal can arise only after the City approves the LAX Project upon a consistency finding or makes a final decision to overrule an ALUC inconsistency finding. In other words, no appeal can be filed until the City takes some final action related to the LAX Project. Moreover, the local agencies who could file such an appeal would be the potentially affected jurisdictions, including the County and the cities of El Segundo, Inglewood, Hawthorne, and Culver City.

To bring an appeal, the involved jurisdiction would have to assert that it has reached an impasse with the City over the LAX Project. Any unresolved issue between that jurisdiction and the City regarding the proper planning for the airport could constitute an impasse.

One example of such an impasse could be a claim by an involved jurisdiction that the LAX Project results in an improper concentration of passenger flights to and from LAX rather than spreading these flights more proportionately throughout the region. Another example could be a challenge by a city neighboring LAX that the LAX Project improperly moves a runway closer to its border.

Because a consistency determination would have already been reached by the County ALUC prior to the appeal, the appeal would not turn solely on

consistency of the LAX Project with the County Compatibility Plan. Rather, it would more broadly consider whether the LAX Project undermines the purposes of the ALUC law. In other words, the appeal would evaluate whether the LAX Project ensures the orderly expansion of LAX while at the same time minimizing the public's exposure to excessive noise and safety hazards within the surrounding areas.

If the County ALUC grants an appeal, the consequences for the LAX Project would be similar to those described above for an inconsistency determination, aside from the overrule vote, discussed below. In other words, if the Master Plan is disallowed on the appeal, the entire LAX Project would fail and could not proceed under its existing terms.

On the other hand, if only the Implementation Program is disallowed on appeal, the LAX Project could proceed. In that case, the City could either revise the Implementation Program to be consistent with the County Compatibility Plan, or the County ALUC could require all of the City's individual regulations and permit applications within the airport planning boundary to be submitted to the County ALUC for review. In this situation, the County ALUC's review of these applications would be subject to the same consistency and appeal procedures as the original Implementation Program.

A significant difference exists between the consistency and appeal processes with respect to the overrule vote. Instead of the two-thirds vote of the City Council members to overrule an ALUC inconsistency determination, the City Council would need a four-fifths vote of its members to overrule an adverse ALUC decision on an appeal.

Three points should be noted with respect to these appeals.

First, the County ALUC has never had occasion to hear appeals under this statute and therefore is currently working with our office to develop the appropriate appeal procedures for the LAX Project. These procedures will, among other things, require that the appeal be filed within 30 days of the City's final action approving the LAX Project.

Second, the City's Opinion asserts that the appeal statute is inapplicable in connection with the LAX Project. The City's Opinion recognizes that an appeal may be proper under certain circumstances to resolve impasses among competing local agencies in airport planning. However, the City's Opinion does not specify the appropriate circumstances when such an appeal can arise but nonetheless concludes that no such circumstances are present in the instant context.

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Accordingly, in the view of the City's Opinion, the City Council would never need other than a two-thirds vote to overrule an adverse County ALUC determination.

As the above discussion indicates, we disagree with this conclusion and believe that an appeal and a potential four-fifths overrule could properly arise in the County ALUC's review of the LAX Project.

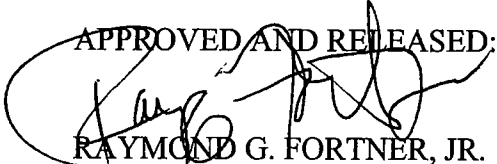
Finally, based on the Attorney General's opinion regarding the quorum question in the context of overruling an inconsistency determination, discussed in Section III(A) above, we believe the City would contend that, even if an appeal could arise in connection with the LAX Project, the four-fifths overrule vote for such an appeal would be based on a quorum of the City Council members (10) rather than the City Council's full membership. This would mean that the overrule vote for an appeal could be as few as eight votes (four-fifths of ten). Again, the courts have not addressed this specific statutory issue.

Respectfully submitted,

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